IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

SA.No. 8 of 1994()
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AS.48/1992 of SUB COURT, VADAKARA
OS.22/1986 of MUNSIFF COURT, NADAPURAM
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APPELLANTS/APPELLANTS/DEFENDANTS 2 TO 10:
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1. K.KATHEESA, D/O.KUNHAMMAD, 42 YEARS, KUNNUMMAL AMSOM DESOM, VADAKARA TALUK.

2. C.P.BEEYATHU, 40 YEARS, NARIPPATTA AMSOM, CHEEKKONNUMMAL DESOM, VADAKARA TALUK

3. C.KUNHAMI, 38 YEARS, KUNNAMKODE AMSOM, CHEEKKONNUMMAL DESOM, VADAKARA TALUK

4. C.K.KUNAVULLA, 35 YEARS, BUSINESS, KUNNAAMODE AMSOM, DESOM, DO TALUK

5. K.M.MOIDU, 33 YEARS, BUSINESS, DO DO

6. G.H.POCKER, 31 YEARS, HOTEL MAJESTIC PORT BLAIR, A.BAZAR ANDAMAN, NOW RESIDING AT KUMMUMMAL AMSOM, DESOM, VADAKARA TALUK

7. C.SOOPY, 29 YEARS, BUSINESS KUNNUMMAL AMSOM, DESOM, RESIDING AT KARUVANKANDIYIL DO TALUK

8. C.MAMMU, 27 YEARS, BUSINESS DO. DO

9. C.ANDRU, 25 YEARS, RESIDING AT KOROLLATHIL KUTTIPRAM AMSOM DESOM, DO. TALUK

BY ADV. SRI.K.P.DANDAPANI

RESPONDENT/RESPONDENT/PLAINTIFF:
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T.V.KUNHIRAMAN NAMBIAR, S/O.KANNAKURUP, 71 YEARS RETIRED VILLAGE FFICER, RESIDING AT CHETTACKAL KUNNUMMAL AMSOM

DESOM, VADAKARA TALUK.

BY ADV. SRI.R.K.MURALEEDHARAN
BY ADV.B.PARTHASARATHY

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007/,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.PNO.531/94 & 13/94 IN SA 8/94

DISMISSED

3/7/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

**M.SASIDHARAN NAMBIAR,J.**

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S.A.NO.8 OF 1994

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Dated 3rd July 2007

**J U D G M E N T**

Defendants 2 to 10 in O.S.22 of 1986 on the file of Munsiff court, Nadapuram are the appellants. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for permanent prohibitory injunction. Trial court granted the decree upholding possession of respondent over plaint schedule property. Appellants challenged the decree and judgment before Sub court, Vadakara in A.S.48 of 1992. First defendant died during the pendency of the suit. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in second appeal. Though notice was issued, no substantial question of law was framed at the time of admission.

2. Learned counsel appearing for appellants and respondent were heard.

3. Learned Munsiff and learned Sub Judge on appreciating the evidence upheld the case of

respondent that he is in possession of the plaint schedule property on the date of the suit. No issue on the question of title was framed. In such circumstances, only relevant question is whether the findings on possession warrants interference in exercise of the powers of this court under Section 100 of the Code of Civil Procedure.

4. Findings on possession is a finding of fact. Trial court on the evidence found that respondent has established his possession. First appellate court on re-appreciation of evidence confirmed that finding. That factual finding cannot be interfered in exercise of powers under Section 100 of Code of Civil Procedure. No substantial question of law is involved in the appeal. In such circumstances, appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

**JUDGMENT**

S.A.No.8 OF 1994

3rd JULY 2007

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